

PROPOSED REGULATION

SUBJECT: “PUBLICATION OF TAX INFORMATION”
30 Del. C. § 359(b). A NEW ENACTMENT OF THE 143RD
GENERAL ASSEMBLY

DATED: **October 5, 2006**

AUTHORITY: This regulation is promulgated pursuant to the authority given the Secretary of Finance, State of Delaware (the Department) in section 354 of Title 30 of the Delaware Code as well as section (8) of the new act.

Questions have arisen about the application and interplay between sections (b)(2) and (b)(4) of the act as they relate to the publication of names when in the case of entities other than natural persons the Department is contemplating publishing the names of 25% owners, beneficial owners, or responsible officers of such entities. Particularly, the Department has been asked if the word “taxpayer” appearing in the first line of section (b)(2) and in section (b)(4) means only “the entities other than natural persons” referred to in last part of section (b)(2) or whether the word “taxpayer” as used in section (b)(2) includes those individual 25% owners, beneficial owners or responsible officers of the entities whose names the Department intends to publish?

REGULATION

The Department interprets the word “taxpayer” appearing in sections (b)(2) and (4) to include within its scope those individual 25% owners, beneficial owners and responsible officers of entities other than natural persons. Therefore, before one of their names can be published the liability against the individual owner, beneficial owner or responsible officer must be reduced to judgment.

DISCUSSION

The general intent of the act taken as a whole is to coerce the payment of existing tax liabilities. The specific command of subsection (b)(4) and the plain meaning of the words therein is that before a taxpayer’s name can be published the liability must be reduced to judgment. This requirement we understand to be a precaution to insure that the taxpayer is aware of his personal responsibility for a liability that has become fixed, liquidated and final. Section (b)(4) goes on to require notice of the judgment be given to the taxpayer and in the section’s own words to the same class of persons who can be named under (b)(2) to wit: owners, beneficial owners, and responsible officers. As the two sections use identical words we are compelled to conclude that the General Assembly intended them to mean the same thing and to require the same safe guards be

complied with before the name of an entity's owner, beneficial owner or responsible officer is published in the coercive manner contemplated.

Questions or comments about this regulation may be directed to Deputy Director Colleen Yegla at c.yegla@state.de.us or by phone to (302) 577-8680.